

for relief, in which event the petition must be filed within six months from the date of mailing of the action.

(b) If the refusal of the affidavit or declaration is adhered to, the registrant may petition the Commissioner to review the action under § 2.146(a)(2). The petition to the Commissioner requesting review of the action adhering to the refusal of the affidavit or declaration must be filed within six months from the date of mailing of the action which denied reconsideration.

(c) The decision of the Commissioner on the petition will constitute the final action of the Patent and Trademark Office. If there is no petition to the Commissioner, the Commissioner will notify the registrant of the refusal of the affidavit or declaration after the expiration of six years from the date of registration or from the date of publication under section 12(c) of the Act of 1946, and such notice will constitute the final action of the Office.

(d) A petition to the Commissioner for review of the action shall be a condition precedent to an appeal to or action for review by any court.

[48 FR 23143, May 23, 1983, as amended at 58 FR 54503, Oct. 22, 1993; 61 FR 56448, Nov. 1, 1996]

**§ 2.166 Time of cancellation.**

If no affidavit or declaration is filed within the sixth year following registration or publication under section 12(c) of the Act, the registration will be cancelled forthwith by the Commissioner. If the affidavit or declaration is filed but is refused, cancellation of the registration will be withheld pending further proceedings.

**AFFIDAVIT OR DECLARATION UNDER  
SECTION 15**

**§ 2.167 Affidavit or declaration under section 15.**

The affidavit or declaration in accordance with § 2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Act of 1881 or 1905 and published under section 12(c) of the Act (§ 2.153) must:

(a) Be signed by the registrant;

(b) Identify the certificate of registration by the certificate number and date of registration;

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years subsequent to the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce, specifying the nature of such commerce;

(d) Specify that there has been no final decision adverse to registrant's claim of ownership of such mark for such goods or services, or to registrant's right to register the same or to keep the same on the register;

(e) Specify that there is no proceeding involving said rights pending in the Patent and Trademark Office or in a court and not finally disposed of;

(f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c).

The registrant will be notified of the receipt of the affidavit or declaration.

(g) Include the required fee for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (see § 2.6) are filed in the Patent and Trademark Office within the time limit set forth in the notification of this defect by the Office. If insufficient fees are included to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

(Sec. 15, 60 Stat. 433; 15 U.S.C. 1065; 35 U.S.C. 6; 15 U.S.C. 1113, 1123)

[30 FR 13193, Oct. 16, 1965, as amended at 47 FR 41282, Sept. 17, 1982]

**§ 2.168 Combined with other affidavits or declarations.**

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, provided it also complies with the requirements and is filed within the time limit specified in §§ 2.161 and 2.162.